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Federal Communications Commission

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	MM Docket No. 97-138
Review of the Commission's Rules)	
regarding the main studio and)	
local public inspection files of)	
broadcast television and radio stations)	
)	
47 C.F.R. §§ 73.1125,)	
73.3526 and 73.3527)	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 22, 1997

Released: May 28, 1997

Comment Date: August 8, 1997

Reply Comment Date: September 8, 1997

By the Commission:

I. INTRODUCTION

1. As part of our continuing effort to ensure that our rules serve the public interest without imposing unnecessary regulatory burdens, we here consider relaxation of our broadcast main studio and local public inspection file rules. The main studio rule generally requires each AM radio, FM radio, and television broadcast station to maintain its main studio within its principal community signal contour.¹ The local public inspection file rules require broadcast stations to maintain a number of records in a file that is accessible to the public.² Our current rules require that this file be located at the station's main studio where the studio is situated in the station's community of license, or, if the main studio is outside the community of license, at any accessible place (such as a public registry for documents or an attorney's office) in the

¹ 47 C.F.R. § 73.1125(a). The rule sets forth a number of limited exceptions to this requirement. *Id.* at § 73.1125(a)(1) - (4).

² 47 C.F.R. § 73.3526 (local public inspection file rule for commercial stations), § 73.3527 (local public inspection file rule for noncommercial educational stations).

station's community of license.³ Both rules seek to ensure that members of the local community have reasonable access to station management and information about the station. This enables the residents of the community to monitor a station's public interest performance, and encourages a continuing dialogue between the station and its community. In this way, a station is better integrated into the activities of the community and can be more responsive to local community needs in its programming.⁴

2. We have received a number of petitions for rule making regarding these rules. None of these petitions questions the underlying purposes served by the rules. Rather, they seek to relax various aspects of the rules in a manner they believe will lessen regulatory burdens on licensees without any detriment to the public interest. In particular, Apex Associates, Armak Broadcasters, Inc., Starview Media, Inc., Silverado Broadcasting Co., and Mountain View Broadcasting Company ("Apex, et al."), filed a petition for rule making (the "Apex petition") on July 8, 1996, requesting amendment of our main studio rule to allow a licensee to locate its main studio in any location which it deems "reasonably accessible" to its community of license. The Apex petition, as well as petitions for rule making submitted by Lauren Colby (filed August 20, 1993), Hardy and Carey (filed May 13, 1994), and Salem Communications Corp. (filed March 15, 1995), also request that we amend our local public inspection file rules to allow a licensee to locate a station's public files at the main studio, wherever the studio is located. Finally, David Tillotson filed a petition for rule making on July 8, 1996 requesting that we delete from the public file rules the requirement that the assignee in an assignment of license is responsible for ensuring that the public file contain all the documents previously required to be maintained in the file by the assignor.

3. We placed these petitions on public notice, and received several comments and reply comments that generally supported the petitioners' proposals.⁵ We believe a number of these proposals may be in the public interest in that they would provide broadcast licensees additional flexibility in complying with the main studio and public inspection file rules, while at the same time ensuring that the rules continue to facilitate interaction between licensees and their local communities. This Notice seeks comment on the various issues raised by these proposals. We also take this opportunity to seek comment on various ways to update and clarify our local public inspection file rules.

³ 47 C.F.R. §§ 73.3526(d), 73.3527(d).

⁴ See Report and Order, Amendment of Main Studio and Program Origination Rules for Radio and Television and Radio Broadcast Stations, 2 FCC Rcd 3215, 3218 (1987). ("Main Studio and Program Origination Report and Order"); Records of Broadcast Licensees, 4 RR 2d 1664 (1965); Promulgation of the Rules and Regulations Concerning the Origination Point of Programs, 43 FCC 570, 571 (1950).

⁵ The Apex petition was placed on Public Notice on September 13, 1996, in Report No. 2153. The petitions filed by Lauren Colby, Hardy and Carey, Salem Communications Corp., and David Tillotson were placed on Public Notice on August 13, 1996 in Report No. 2147.

II. MAIN STUDIO RULE

4. Background. Section 307(b) of the Communications Act of 1934 requires the Commission to "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide for a fair, efficient, and equitable distribution of radio service to each of the same."⁶ In carrying out this mandate, the Commission has established a scheme for distributing broadcast service in which every radio and television station is assigned to a community of license with a primary obligation to serve that community.⁷ A central component of this scheme requires that a broadcast station's main studio be accessible to its community of license. This permits "community residents to readily contact the station to voice suggestions or complaints."⁸ We have also observed that "[e]xposure to daily community activities and other local media of communications helps stations identify community needs and interests, which is necessary to operate in today's competitive marketplace and to meet our community service requirements. In addition, the studio will continue to be accessible to community residents participating in those local programs that, at the broadcaster's option, are produced at the studio."⁹

5. Prior to our most recent amendment of the rule, broadcasters were required to maintain their main studios in their community of license. In 1987, we relaxed the rule to permit a station to locate its main studio outside its community of license provided it is within its principal community contour.¹⁰ In doing so, we noted that the role of the main studio in the production of programming had diminished over the years, that community residents often communicate with stations by telephone or mail rather than visiting the studio, and that the growth of modern highways and mass transit systems had reduced travel times. We further observed that the revised rule would allow broadcasters to obtain certain efficiencies, such as co-locating a station's studio at its transmitter site or moving the studio to lower cost areas. These factors persuaded us that relaxing the rule would provide broadcasters greater flexibility while at the same time ensuring that their main studios continued to be reasonably accessible to the communities they serve.¹¹

⁶ 47 U.S.C. § 307(b).

⁷ See Main Studio and Program Origination Report and Order, 2 FCC Rcd at 3215.

⁸ Id.

⁹ Id. at 3218. In 1987, the Commission eliminated a requirement that stations originate a set minimal percentage of their programming from their main studios or other points within their communities. Id. at 3218-19.

¹⁰ Id. Under the current rule, each station's main studio must maintain program origination and production facilities and a full-time management and staff presence during business hours, and provide local or toll-free telephone service to facilitate contact by members of the community.

¹¹ Id. at 3217-18.

6. The Apex petition for rule making proposes a further relaxation of the rule. It requests the Commission to amend the rule to provide that "every AM, FM and TV station shall maintain a main studio which is so situated as to be reasonably accessible to residents of the station's community of license." The petition also proposes that the definition of "reasonably accessible" be left within the discretion of each licensee, or in the alternative, that this term be defined as "within 30 minutes normal driving time" from the community of license. All commenters support the proposed amendment to the rules.¹²

7. In support of the proposed rule amendment, Apex, et al., argue that the current requirement imposes substantial burdens on multi-station licensees who could operate more efficiently from one centrally located studio/office complex. According to Apex, et al., for these licensees, individual main studios serve no useful purpose, since they are not used to originate programming and are rarely visited by the public. Nevertheless, the Apex petition argues, they are required to install and maintain program origination and production facilities, and pay rent, utilities and telephone, and the salaries of two employees, one of whom must remain present during business hours to receive the occasional visitor. The Apex petition further argues that maintaining a main studio within the principal community contour does not ensure that the studio will be accessible to the community, especially with stations whose contours have radii which extend 30-40 miles, and it cites several examples of situations which illustrate this argument. These examples also suggest that the rule results in inequitable treatment of stations because higher power stations necessarily have a much larger area in which to locate their main studios than lower power stations. In addition, Apex, et al., suggest that some locations outside the community of license are more accessible to more people than many locations within the community of license.

8. Discussion. The Apex petition presents several legitimate reasons for considering relaxation of the main studio rule. As an initial matter, the parties have pointed out that the current rule may be imposing undue burdens on licensees. There is a longstanding Congressional and Commission policy in favor of reducing regulatory burdens consistent with the public interest wherever appropriate.¹³ We also believe a review of the rule is particularly warranted in light

¹² Comments were filed by Minority Media and Telecommunications Council ("MMTC"), Hardy and Carey, and Xavier University. MMTC believes that the amendment will allow licensees of stations located in the "exurbs" to locate their main studios in urban locations which will be more accessible to minority citizens and allow greater public participation and issue responsive programming. Xavier University, licensee of seven noncommercial educational public radio stations in a four state region, requests that the Commission address the potential effects of amendment to the main studio rule on regional network stations that are located in different states. It supports the Apex petition, and argues that there "should be no blanket prohibition on the grant of a waiver of the main studio requirement" simply because a satellite station and its commonly owned feeder station are in different states. Comments of Xavier University at 3.

¹³ See S. Conf. Rep. 104-230, 104th Cong. 2d Sess. 1 (1996) (purpose of the 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework"); S. Conf. Rep. 96-878, 96th Cong. 2d Sess. 1 (1980) (purpose of Regulatory Flexibility Act is "to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise

of the recent changes in the local radio ownership rules. In 1987, the last time the main studio rule was revised, the maximum number of radio stations that a single licensee could own in a market was two: one AM and one FM.¹⁴ Subsequently, the Commission amended the local radio ownership rules to permit ownership of up to three commercial radio stations, no more than two in the same service, in radio markets with 14 or fewer radio stations, provided that the owned stations, if other than a single AM and FM combination, represented less than 50 percent of the stations in the market; in markets with 15 or more commercial radio stations, the rules permitted ownership of up to two AM and two FM commercial radio stations if the combined audience share of the commonly owned stations did not exceed 25 percent in the market. In February 1996, President Clinton signed into law the Telecommunications Act of 1996 ("1996 Act"),¹⁵ which further relaxed the local radio ownership limits.¹⁶ In the largest markets, for example, a single entity can now own up to eight commercial radio stations.¹⁷ A licensee owning two or more stations in the same area may find it most efficient to operate these stations from a centrally located studio/business office, yet the main studio rule would require it to maintain a separate main studio for one or more of its commonly-owned stations if they do not place a principal community contour signal over the central studio/office. As the Apex petition points out, this can impose substantial burdens on the licensee, depriving it of savings that could be put to more productive use for the benefit of the community served by the station. These burdens are also arguably inconsistent with the economies of scale that can be achieved through common ownership of stations that Congress implicitly found to be in the public interest in relaxing the local radio ownership rules in the 1996 Act.¹⁸

be unnecessarily adversely affected by Federal regulations"); Implementation of Section 203 of the Telecommunications Act of 1996 (Broadcast License Terms), MM Docket No. 96-90, FCC 97-17 (released Jan. 24, 1997) (extending broadcast license terms to 8 years consistent with policy of reducing regulatory burdens).

¹⁴ See Main Studio and Program Origination Report and Order, 2 FCC Rcd 3215 (1987).

¹⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁶ Revision of Radio Rules and Policies, 7 FCC Rcd 2755 (1992), on recon., 7 FCC Rcd 6387 (1992), on further recon., 9 FCC Rcd 7183 (1994).

¹⁷ The new rules are as follows: (1) In a radio market with 45 or more commercial radio stations, a party may own up to 8 commercial radio stations, not more than 5 of which may be in the same service (AM or FM); (2) in a market with between 30 and 44 stations, a party may own up to 7 stations, not more than 4 of which may be in the same service; (3) in a market with between 15 and 29 stations, a party may own up to 6 stations, not more than 4 of which are in the same service; and (4) in markets with 14 or fewer stations, a party may own up to 5 stations, not more than 3 of which may be in the same service, except that a party may not own more than 50 percent of the stations in such market. See 47 C.F.R. § 73.3555(a)(1); Order, 61 Fed. Reg. 10689 (March 15, 1996) (implementing new radio ownership limits in 1996 Act).

¹⁸ In amending the radio ownership rules prior to the 1996 Act, we found that relaxation of ownership limits can "grant operators greater opportunity to combine administrative, sales, programming, promotion, production and other functions, as well as to share studio space and equipment. Not only will such efficiencies enable radio stations to improve their competitive standing; they may also play a significant part in improving the diversity of

9. We also believe that review of the main studio rule is warranted because it may place disproportionate burdens on owners of smaller stations. The principal community contour of a broadcast station -- the determinant of the main studio's location -- varies greatly depending on a station's channel or class. High power stations, which have principal community contours as great as 70 or 80 miles in diameter, consequently have greater flexibility in locating their main studios under the rule than low power stations, which can have principal community contours as small as 20 miles in diameter.¹⁹ While the current rule serves to "ensure[] that the main studio is located in the primary reception area of the station,"²⁰ the petitioners and commenting parties have raised concerns about the differential treatment between small and larger stations that call for a review of the rule's use of a principal community contour standard.

10. We further note that, as some of the petitioners and commenters maintain, it is possible for a main studio to be outside the station's principal community contour and yet still be reasonably accessible to the community of license. For example, a location outside the principal community contour may be convenient to community residents because of its proximity to particular commuting patterns, access to public transportation or major highways, or the

programming available to the public." Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2760-61 (1992), on recon., 7 FCC Rcd 6387 (1992), on further recon., 9 FCC Rcd 7183 (1994).

¹⁹ By way of illustration, the size of the principal community ("city-grade") contour (70dBu) for all FM stations varies by class of station. At maximum facilities for each class of station, the radius of the contours are as follows:

Class A	16.2 km (10.1 miles)
Class B1	23.2 km (14.5 miles)
Class B	32.6 km (20.4 miles)
Class C3	23.2 km (14.5 miles)
Class C2	32.6 km (20.4 miles)
Class C1	50.0 km (31.3 miles)
Class C	67.7 km (42.3 miles).

The 5 mV/m contour is the city grade contour for AM stations. This actual contour is calculated using a formula taking into account the frequency, power, radiation and ground conductivity of the facilities. It varies from station to station since ground conductivity is different depending on the geographic area.

The city grade contour for broadcast television stations is specified according to channel. The contour for Channels 2-6 is the 74 dBu contour, for Channels 7-13, it is 77dBu, and for Channel 14-69, it is 80 dBu. The size of the contour varies by channel and geographic zone. The size of the radius of the city-grade contour at maximum facilities for each group of channels by zone are as follows:

Channels 2-6	Zone I	43.4 km (27 miles)
Channels 2-6	Zones II, III	60.3 km (37.5 miles)
Channels 7-13	Zone I	53.1 km (33 miles)
Channels 7-13	Zones II, III	70.8 km (44 miles)
Channels 14-69	Zones I, II, III	80.0 km (43 miles).

²⁰ Main Studio and Program Origination Report and Order, 2 FCC Rcd at 3218.

availability of ample public parking. The current rule may be too limited to take into account these possibilities. Conversely, many locations within a principal community contour may be difficult or relatively inconvenient to get to.

11. Given the above factors, we generally propose to relax the main studio rule and replace the community contour standard with a new standard that gives licensees additional flexibility yet continues to ensure that the main studio is reasonably accessible to a station's community of license. We seek comment on this general proposal and its potential impact on the public interest. We particularly invite comment on the manner in which we should determine whether a station's main studio is reasonably accessible to the residents of its community of license.

12. The Apex petition argues that the revised rule should simply require the main studio be "reasonably accessible to residents of the station's community of license," leaving it to the discretion of each licensee to define what reasonable is in the first instance. As an alternative, the Apex Petition argues that "reasonably accessible" should be defined as "within 30 minutes normal driving time" from the community of license. While we seek comment on these options, we are not inclined to adopt them given their lack of clarity. While relaxing the rule, they would appear to create a significant amount of uncertainty for the public and licensee, regarding the appropriate location of a station's main studio. Such a vague rule could make it difficult for licensees to determine whether a chosen site complies with the rule, and could generate numerous disputes which would have to be resolved by the Commission on an individual basis, which would be administratively inefficient.

13. Another option would involve retaining the principal community contour standard and adopting a waiver policy that would allow a station to locate its main studio outside the contour in specified circumstances. Such a policy would permit the Commission to examine on a case-by-case basis commuting patterns, population densities, local transportation and highway systems, and other factors unique to each community. We are disinclined, however, to pursue this approach. It too would create considerable uncertainty and would impose substantial administrative burdens on both licensees and the Commission. We also note that our rules currently permit a licensee to seek a waiver of the Commission's main studio location requirement.²¹

14. We consequently favor a generally applicable rule that measures "reasonable accessibility" in a manner that can be clearly and easily understood and applied. One way this could be accomplished is to require that the main studio be located within the principal community contour of any station licensed to the community of license in question. This would provide a clear, easy-to-apply rule, eliminate the differential treatment in the current rule between low and high power stations, and give many stations a larger area within which to choose a studio location. For example, in a community with a licensed Class A FM station and a licensed Class

²¹ 47 C.F.R. § 73.1125(a)(4).

C FM station, either station could locate its main studio anywhere within the latter station's principal community contour, which generally has a radius of over 42 miles.²² We question, however, whether this would provide for a studio location far from the listeners of smaller stations. Accordingly, we seek comment on whether this approach provides sufficient flexibility to licensees while continuing to ensure that their main studios are reasonably accessible to the communities they serve.

15. We also seek comment on using a straight mileage standard rather than relying on a measurement based on signal contours. In particular, the rule could be revised to require a station to locate its main studio within a radius of a set number of miles from a common reference point in the station's community of license, such as the community's city-center coordinates. Is this approach preferable to the use of signal contour standards? If the Commission adopts this approach, what mileage standard would be an appropriate measure of reasonable accessibility? Another option would combine the above two approaches: a station could choose to locate its main studio anywhere in the principal community contour of any station licensed to the same community, or within a set distance from the community center, whichever provides greater flexibility. Still another alternative would permit an entity that owns multiple stations in a market to co-locate the main studio for these stations at any one of the commonly owned stations, provided each of the stations is located in the same local market²³ and that the main studio was within some set distance from the community center.

16. We invite comment on these various approaches and any other proposals that commenters believe will serve the public interest by minimizing unnecessary regulatory burdens and ensuring that residents of a local community have reasonable access to the broadcast stations licensed to serve them. We emphasize that in proposing modifications to our main studio rule we in no way seek to alter the obligation of each broadcast licensee to serve the needs and interests of its community. As the Commission has long recognized, this is a "bedrock obligation" of every broadcast licensee.²⁴ Rather, we propose to relax the main studio rule in a manner consistent with this obligation.

²² In comparison, the Class A station generally has a principal community contour radius of 10.1 miles. See supra note 19.

²³ The local radio market is defined as the area encompassed by the principal community contours (i.e., predicted or measured 5 mV/m for AM stations and predicted 3.16 mV/m for FM stations) of the mutually overlapping co-owned stations. See Implementation of Section 202(a) and 202(b)(1) of the Telecommunications Act of 1996, 11 FCC Rcd 12368, 12370 (1996); Memorandum Opinion and Order in MM Docket No. 91-140, 7 FCC Rcd 6387, 6395 (1992).

²⁴ Deregulation of Radio, 84 FCC 2d 968, 977, 982 (1981), on recon., 87 FCC 2d 797 (1981), remanded on other grounds sub nom. Office of Communication of the United Church of Christ v. FCC, 707 F.2d 1413 (D.C. Cir. 1983). See also En Banc Programming Inquiry, 44 FCC 2303, 2312 (1960) ("The principal ingredient of [the public interest] obligation consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area.").

III. LOCAL PUBLIC INSPECTION FILE RULES

A. Location of the Local Public Inspection File

17. Background. The Commission requires a broadcast station to maintain its local public inspection file at its main studio in its community of license or at any accessible place in the community of license (e.g., an attorney's office or local public library) if the station's main studio is located outside the community.²⁵ As with the main studio rule, reasonable access to the public inspection file facilitates monitoring of a station's operations and public interest performance by the public and encourages a community dialogue with local stations. This in turn helps ensure that stations are responsive to the needs and interests of their local communities.

18. In their petitions for rule making, Apex, et al., Lauren Colby, and Hardy and Carey request that the Commission amend the public inspection file rule to provide that the public file be maintained at the main studio, wherever located. These parties state that the main studio is the most logical and likely location that members of the public would seek to find a station's public file. They also state that experience under the current rule has shown that files maintained outside the main studio are subject to mishandling, loss of documents, and destruction because the files are not under the daily supervision of the licensee. In addition, they claim that because so few members of the public actually seek access to the off-premises public file, the expense involved in maintaining that file often is not offset by any benefit to the public.

19. Salem Communications Corp. proposes a different approach regarding the location of the public inspection file. It proposes that the Commission require any licensee who elects to locate its public file at its main studio outside its community of license to also accommodate the public in one of the three following ways: (1) provide free transportation to the main studio; (2) deliver the public file to a location specified by the requestor; or (3) provide specified documents by mail. Commenters uniformly support the proposed amendment advanced by Apex, et al., Lauren Colby, and Hardy and Carey, but do not favor the variation proposed by Salem.²⁶

²⁵ Sections 73.3526(d) (governing commercial stations) and 73.3527(d) (governing noncommercial stations) state in pertinent part:

(d) Location of Records. The file shall be maintained at the main studio of the station, where such studio is located in the community to which the station is licensed or where such studio is located outside the community of license pursuant to authorization granted under §73.1125(a) of the rules prior to July 16, 1987, or at any accessible place (such as the public registry for documents or an attorney's office) in the community in which the station is or is proposed to be licensed

47 C.F.R. §§ 73.3526(d), 73.3527(d).

²⁶ Hardy and Carey, Salem Communications Corp., and Apex filed comments in support of their petitions for rule making which reiterate their original arguments. Additional commenters are a group of Noncommercial Educational Licensees and the National Association of Broadcasters ("NAB"). Odyssey Communications, Inc., filed reply comments.

20. Discussion. We propose to amend our rules to permit both commercial and noncommercial stations to locate their local public inspection files at their main studios, wherever located. Coupled with our proposal above regarding the location of the main studio, this would place the public file at the same "reasonably accessible" location as the main studio, which would not necessarily be in the community of license. We also seek comment on reasonably accessible locations for the public file of an applicant for a new station or change of community. We propose that such a party maintain its file in the proposed community of license or at its proposed main studio.

21. We recognize that in amending the main studio rule in 1987 the Commission determined that the public inspection file should be maintained in a station's community of license in order to "assure meaningful public participation in our licensing process."²⁷ The petitioners, however, have pointed to a number of public interest reasons in favor of permitting licensees to locate their public inspection files at their main studios, even when these are outside the station's community of license. Allowing this flexibility will reduce regulatory burdens on licensees while at the same time ensuring, as with our proposed amendment to the main studio rule, that the public file is reasonably accessible to residents of the local community, and could well increase the convenience to the public in some cases. Reasonable accessibility of the main studio and the public file has been our benchmark for facilitating public involvement at the station. We also believe that it would serve the public interest to provide stations greater flexibility in locating the public inspection file and main studio given the increased number of same-market, multiple-station owners under the new radio ownership rules. As described in our discussion of the main studio rule, supra ¶ 8, this is consistent with the relaxation of these rules because it allows stations to avail themselves of economies of scale and allows them to channel their resources in ways that would better serve the public. In addition, it would appear that the main studio is the most logical and likely place for the public to expect to find a station's public inspection file, given that it will typically be listed in the local telephone directory. Furthermore, we believe the public would be better served if the file is maintained and stored under the direct control of the station. Not only would there be greater assurance that the file is kept up-to-date and in proper order, but also the public would be able to request assistance in researching the public file if necessary.

22. We invite comment on our proposal to permit licensees to locate their local public inspection file at their main studio, even when the main studio is outside the station's community of license. We particularly seek comment on whether this will ensure that the public file continues to be reasonably accessible to a station's local community. We also ask broadcasters to describe specifically the efficiencies that can be achieved in providing greater flexibility under the rule, and how these efficiencies can benefit the public. Parties are invited to comment on the proposals advanced by Salem Communications Corp. to ensure public access, as described above, and any other such alternatives regarding the accessibility and location of the public inspection file that they believe would serve the public interest.

²⁷ Main Studio and Program Origination Report and Order, 2 FCC Rcd at 3218.

B. Public Inspection File Contents

23. We also take this opportunity to seek comment on updating our requirements regarding the materials that a station must place in its public inspection file. As stated above, the public file contains information that facilitates meaningful public participation in monitoring licensee compliance with public interest obligations.²⁸ The requirements regarding the contents of the public file for noncommercial educational stations are similar to those that apply to commercial stations, although there is some variation.²⁹ Currently, the public inspection file for both commercial and noncommercial stations must contain general information pertaining to the station, such as certain applications and related materials the station may have filed with the FCC, ownership reports, employment reports, and a list of programs aired by the station during the previous three months that provided its most significant treatment of community issues (the "issues/programs list"). Broadcast licensees must also maintain a separate file concerning broadcasts by political candidates.³⁰ In addition, all commercial broadcast television licensees must maintain a public file containing information regarding the educational and informational children's programming they air pursuant to the Children's Television Act of 1990.³¹ The Commission recently revised these children's television public file requirements in its children's television proceeding.³²

24. We propose to amend our rules to eliminate or revise certain aspects of the local public inspection file rules that are out-of-date or that require clarification. In particular, we plan to revise the rules as follows:

- (a) We propose to delete the requirement that licensees maintain in their public file the 1974 manual entitled "The Public and Broadcasting."³³ This manual is long out-of-date.
- (b) We will delete the reference in Section 73.3526(a)(11) of our rules regarding the

²⁸ See Records of Broadcast Licensees, 4 RR 2d 1664 (1965).

²⁹ See 47 CFR §73.3527. Certain noncommercial educational stations are exempt from certain aspects of the local public inspection file rule.

³⁰ 47 CFR §§ 73.1943, 73.3526(a)(4).

³¹ See Review of Policies and Rules Concerning Children's Television Programming, 11 FCC Rcd 10660, 10692 (1996); 47 CFR § 73.3526(a)(8)(iii).

³² In particular, under the new rules commercial television stations must, among other things, place in their public file on a quarterly basis a completed Children's Television Programming Report (FCC Form 398); these reports must be separated from other materials in the public inspection file. Review of Policies and Rules Concerning Children's Television Programming, 11 FCC Rcd at 10693-94 (amending Section 73.3526(a)(8)(iii) of the rules).

³³ 47 C.F.R. §§ 73.3526(a)(6) & 73.3527(a)(6).

maintenance of reports that were required under our financial interest and syndication rules, which have been repealed.³⁴

(c) We will correct the cross-reference in the local public inspection file rules to the rule section governing a licensee's political file.³⁵

(d) We plan to delete the note set forth under Sections 73.3526(a)(1) and 73.3527(a)(1) of our rules. This note provides that certain applications filed on or before May 13, 1965 -- the date of a previous FCC Report and Order regarding the local public inspection file rules³⁶ -- need not be placed in the station's public file. This exemption is no longer needed given that, even without the exemption, the retention periods for maintaining such applications have long since expired.

We seek comment on these proposals and any other similar revisions that would serve to update or clarify the public inspection file rules. For instance, are there certain applications covered by the existing rule that no longer need to be maintained in the public file?

25. We also consider here a proposal to revise our requirements regarding the responsibility for maintaining public file materials when a station's license is assigned to a new owner. The rules provide that after the Commission approves an application for assignment of license and the transaction has been consummated, the assignee is responsible for ensuring that the public file contain all the documents previously required to be maintained in the file by the assignor.³⁷ A petition for rule making filed by David Tillotson requests that the Commission amend the public file rule to delete this requirement. Tillotson maintains the proposed change is warranted because the public file need only contain information concerning the current licensee or permittee. According to Tillotson, the public has no practical use for information regarding

³⁴ 47 C.F.R. § 73.3526(a)(11). See Review of Syndication and Financial Interest Rules, FCC 95-382, MM Docket No. 95-39 (released Sept. 6, 1995).

³⁵ Section 73.1943 of the rules describes a licensee's obligation to maintain records (the "political file") regarding requests for broadcast time made by or on behalf of candidates for public office. 47 C.F.R. § 73.1943. The local public inspection file rules for commercial and noncommercial stations incorrectly cross-reference Section 73.1940 of the rules in referring to these political file requirements. 47 C.F.R. §§ 73.3526(a)(4) & (e), 73.3527(a)(4) & (e).

³⁶ Records of Broadcast Licensees, 4 RR 2d 1664 (1965).

³⁷ Section 73.3526(b)(1) provides: "In cases involving applications for consent to assignment of broadcast station construction permits or license, with respect to which public notice is required to be given under the provisions of § 73.3580 or § 73.3594, the [local public inspection file] shall be maintained by the assignor. If the assignment is consented to by the FCC and consummated, the assignee shall maintain the file commencing with the date on which notice of the consummation of the assignment is filed with the FCC. The file maintained by the assignee shall cover the period both before and after the time when the notice of consummation of assignment was filed. The assignee is responsible for obtaining copies of the necessary documents from the assignor or from the FCC files." 47 CFR § 3526(b)(1).

the ownership, programming and EEO practices of a station's prior licensees, and therefore a new licensee should not be required to bear the burden of reconstructing the prior licensee's public file. As to this type of licensee-specific information, we believe there is merit to these arguments, and invite comment on amending our rules to relieve license assignees of this burden. We note, however, that there may be information in the public file relevant to a station's facilities (e.g., engineering material in a modification application filed by the assignor) that is not licensee-specific and therefore should be maintained by the assignee. We seek comment on this issue.

26. Finally, we propose to clarify the general requirement that "[a]ll written comments and suggestions received from the public by licensees of commercial AM, FM, and TV broadcast stations regarding operation of their station shall be maintained in the local public inspection file."³⁸ We wish to clarify that such "written comments and suggestions" include electronic mail messages transmitted via the internet to stations that are capable of receiving them. Internet "email" is now commonly used by many members of the public and is increasing in popularity. Stations may print out a hard copy of such an internet message and place it in their public file. Parties are invited to comment on this proposed clarification.

C. Retention Periods

27. We also take this opportunity to review the retention periods for the materials in a licensee's local public inspection file as well as its political file. These retention periods, set forth in Sections 73.3526(e) and 73.3527(e) of the rules,³⁹ vary depending on the type of record involved, as the following illustrative list indicates:

- (a) Political file materials, which are kept in a separate file, must be retained for two years.
- (b) With respect to commercial broadcast stations, letters received from members of the public must be retained for three years.
- (c) A licensee's issues/programs list must be retained for the term of the station's license, which the current rule states as five years for television licensees and seven years for radio licensees. This provision predates our recent decision extending both television and radio broadcast license terms to eight years.⁴⁰

³⁸ 47 C.F.R. § 73.1202(a). See also 47 C.F.R. §§ 73.3526(a)(7). Such letters need not be placed in the public file when the letter writer requests that the letter not be made public, or when licensee believes it should not be made public because of the nature of its content, such as a defamatory or obscene letter. *Id.* at § 73.1202(a). In addition, these requirements only apply to commercial broadcast stations.

³⁹ 47 C.F.R. §§ 73.3526(e), 73.3527(e).

⁴⁰ See Implementation of Section 203 of the Telecommunications Act of 1996 (Broadcast License Terms), MM Docket No. 96-90, FCC 97-17 (released Jan. 24, 1997).

(d) A television licensee's documentation of its performance under the Children's Television Act of 1990 must be retained for the term of a station's license, which the current rule states as five years. Again, this provision predates the recent extension of license terms to eight years.

(e) The various applications a station must place in its public file generally must be retained by a permittee or a licensee "for a period beginning with the date that they are tendered for filing and ending with the expiration of one license term (five (5) years for television licensees or seven (7) years for radio licensees) or until the grant of the first renewal application of the television or radio broadcast license in question, whichever is later."⁴¹

28. We wish to ensure that our public file retention period requirements provide clear guidance to licensees and the public, facilitate meaningful public participation in monitoring licensee compliance with our rules and policies, and minimize unnecessary paperwork burdens on broadcasters. At a minimum, we propose to revise any public file retention periods that are tied to the broadcast license term (e.g., the issues/programs list) to reflect the new license term of eight years. This is consistent with the rule's purpose in providing the public access to information that is relevant to a station's performance throughout its license term, facilitating monitoring of licensee performance by interested parties as well as their participation in the license renewal process. In addition, we propose to amend the rules to reflect that all documents that are required to be retained for the license term be retained not only for the eight-year license term, but also until the grant of the renewal application is no longer subject to appeal either at the FCC or in the courts. This will ensure that the public has access to pertinent information regarding the licensee's performance during the pendency of its renewal application. We invite comment on this issue.

29. We also seek comment on whether any of our public file retention periods can be shortened to reduce regulatory burdens consistent with the public interest. In particular, our current rules generally require a licensee to retain certain applications filed with the FCC until "the expiration of one license term . . . or until grant of the first renewal application of the television or radio broadcast license in question."⁴² The applications subject to this retention period include, for example, license assignment and transfer applications and applications for

⁴¹ 47 C.F.R. §§ 73.3526(e)(2), 73.3527(e)(2). Certain engineering material in these applications need not be retained longer than three years after a station commences operation under a new or modified mode. *Id.* at §§ 73.3526(e)(2)(i), 73.3527(e)(2)(i). The rules also provide that "[m]aterial having a substantial bearing on a matter which is the subject of a claim against the licensee, or relating to an FCC investigation of which the licensee has been advised, shall be retained until the licensee is notified in writing that the material may be discarded, or, if the matter is a private one, the claim has been satisfied or is barred by statute of limitations." *Id.* at §§ 73.3526(e)(2)(ii), 73.3527(e)(2)(ii).

⁴² 47 C.F.R. §§ 73.3526(e)(2), 73.3527(e)(2).

major facility modifications.⁴³ We question the need to require licensees to retain these materials for this period of time, and propose that they retain such applications only during the period in which they are pending before the FCC or the courts. This would appear to be the period of time that they would have particular relevance to the public. We also note that other public file materials may provide an alternative source for the information contained in these applications; the ownership reports, for example, provide information about a licensee's ownership structure that can be found in an assignment or transfer application. We seek comment on this proposal. Are there some applications or parts of applications that should be kept for a longer period? For example, some applications contain an exhibit in support of a rule waiver and the Commission has granted the waiver based, in part, on the applicant's public interest representation.⁴⁴ How long should the new owner be required to retain such an application or the waiver exhibit in its public file?

30. We seek comment on other ways to clarify and streamline our retention period requirements. What are the appropriate retention periods for a licensee's annual employment reports and annual ownership reports? Should we modify the requirement that commercial stations retain letters from the public for three years?⁴⁵ We particularly seek comment on the appropriate retention period for letters from the public regarding violent programming given the new statutory requirement that licensees summarize such letters in their renewal applications.⁴⁶

D. An Electronic Public File Option

31. We recognize that many stations are equipped with computers and make information available to the public on their own World Wide Web home pages on the internet. We encourage stations to do so, as it facilitates a dialogue between licensees and their communities that can lead to better service to the public. Indeed, in our recently completed children's television proceeding we encouraged stations to post their Children's Educational Programming Reports on their Web

⁴³ See 47 C.F.R. §§ 73.3526(a)(1) & (a)(2), 73.3527(a)(1) & (a)(2) (describing categories of applications that must be kept in the public file). With certain exceptions, engineering materials in these applications need not be kept in the public file. *Id.*

⁴⁴ See Second Further Notice of Proposed Rule Making in MM Docket Nos. 91-221- & 87-8, 61 Fed. Reg. 66978, at ¶¶ 54-55 (1996).

⁴⁵ 47 C.F.R. § 73.3526(a)(7) & (e).

⁴⁶ The 1996 Act amended the Communications Act of 1934 to require that "[e]ach applicant for the renewal of a commercial or noncommercial television license shall attach as an exhibit to the application a summary of written comments and suggestions received from the public and maintained by the licensee (in accordance with Commission regulations) that comment on the applicant's programming, if any, and that are characterized by the commenter as constituting violent programming." 47 U.S.C. § 308(u), (as amended by Section 204(b) of the 1996 Act, Pub. L. No. 104-104, 110 Stat. 56 (1996)).

sites.⁴⁷ We wish to explore other ways in which information now maintained in the local public inspection file could be made available to the internet.

32. We realize, of course, that many Americans and broadcast stations do not have internet access or even computers. There may be options, however, that would allow stations to take advantage of this new technology in ways that reduce paperwork burdens while at the same time provide the public greater access to information about the station. For example, we seek comment on giving stations the option of maintaining all or part of the public inspection file in a computer database rather than in paper files. For example, commercial television licensees will soon be able to complete their Children's Television Programming Reports directly on their computers and then file them electronically with the FCC. A station that chooses to do so could also maintain these Reports in a computer file at its station rather than placing them in its "paper" public inspection file as it is presently required to do every quarter. The station that chooses this option would be required to make a computer terminal available to members of the public interested in reviewing the station's "electronic" public file, and also, as set forth under the current rules, would be required to provide paper copies of such public file materials on request.⁴⁸ We would also encourage such stations to post their "electronic" public files on any World Wide Web sites they maintain. We seek comment on this option as well as other means of using computer technology to provide access to public inspection file materials.

IV. CONCLUSION

33. In this Notice we review various aspects of our main studio and local public inspection file rules. In doing so, we seek to minimize regulatory burdens and facilitate meaningful interaction between broadcast stations and the communities they serve. We have traditionally relied on this interaction as a primary means of ensuring that broadcasters are responsive to the needs and interests of their communities.

V. ADMINISTRATIVE MATTERS

34. Comments and Reply Comments. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before August 8, 1997, and reply comments on or before September 8, 1997. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies.

⁴⁷ Review of Policies and Rules Concerning Children's Television Programming, 11 FCC Rcd at 10695.

⁴⁸ As set forth under the current rules, the requesting party would be required to pay the reasonable cost of reproduction. See 47 C.F.R. §§ 73.3526(f); 73.3527(f).

You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554. Written comments by the public on the proposed and/or modified information collections are due on or before August 8, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

35. Initial Paperwork Reduction Act of 1995 Analysis. This Notice contains either a proposed or modified information collection requirement. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due 60 days from the date of publication of this Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

36. Ex Parte Rules. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

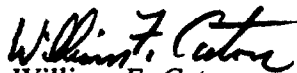
37. Initial Regulatory Flexibility Analysis. With respect to this Notice, an Initial Regulatory Flexibility Analysis ("IRFA") is contained in Appendix A. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in this Notice. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number

of questions in our IRFA regarding the prevalence of small businesses in the radio and television broadcasting industries. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the Notice, but they must have a distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981), as amended.

38. Authority. This Notice is issued pursuant to authority contained in Sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 307.

39. Additional Information. For additional information on this proceeding, please contact Victoria M. McCauley, Policy and Rules Division, Mass Media Bureau, (202) 418-2130.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX A

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and proposals in this Notice of Proposed Rulemaking (Notice). Written public comments concerning the effect of the proposals in the Notice, including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.⁴⁹

Reasons Why Agency Action is Being Considered: Several parties have filed petitions for rule making requesting that the Commission amend its main studio and local public inspection file rules. In addition, the Telecommunications Act of 1996⁵⁰ ("1996 Act") has revised a number of the Commission's multiple ownership rules. The Notice seeks comment on how these multiple ownership rule revisions should affect our review of the main studio and public file rules.

In addition, review of the main studio rule is warranted because it may place disproportionate burdens on owners of smaller stations. This is due to the fact that the rule is based on a standard that uses the principal community contour standard, which varies greatly depending on a station's channel or class. High power stations, which have principal community contours as great as 70 or 80 miles in diameter, consequently have greater flexibility in locating their main studios under the rule than low power stations, which can have principal community contours as small as 20 miles in diameter. The Notice seeks comment on this issue.

Need For and Objectives of the Proposed Rule Changes: The main studio and public file rules seek to ensure that members of the local community have access to the broadcast stations that are obligated under the FCC's rules to serve them. Our goals in commencing this proceeding and in formulating the proposals in the Notice are to relieve undue regulatory burdens on licensees while retaining their basic obligations to serve their communities of license. We also wish to ease the application of the public file rule by deleting obsolete sections and clarifying sections that are not consistent with the corresponding rules. Finally, we seek to eliminate regulations that unduly and disproportionately burden small entities.

To accomplish these goals, the Notice proposes: (1) to relax the requirement in our rules that a broadcaster's main studio be located within its station's principal community contour; (2) to permit licensees to locate their public inspection files at the station's main studio; and (3) to

⁴⁹ Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981), as amended.

⁵⁰ Pub. L. No. 104-104, 110 Stat. 56 (1996).

update and clarify the local public inspection file rules with respect to the required contents of the public files and their retention periods.

Legal Basis: Authority for the actions proposed in this Notice may be found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r).

Recording, Recordkeeping, and Other Compliance Requirements: The Notice proposes modifications to existing recordkeeping requirements. In general, adoption of the proposed rules would allow broadcasters greater flexibility in locating their main studios, and would simply describe more specifically where a licensee must retain the public file it is already required by the Commission's rules to maintain. The Notice also proposes rules addressing how a licensee can make its public inspection file available via the internet, but broadcasters would retain the discretion not to utilize internet technology at all. The Notice proposes to eliminate certain materials that are currently required to be kept in the public file, and seeks comments on ways to clarify and, in some cases, deregulate, the required retention period for public file materials.

Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules: The rules proposed in the Notice would modify the current public file and main studio rules. The proposed rules do not overlap, duplicate or conflict any other rules.

Description and Estimate of the Number of Small Entities to Which the Rules Would Apply:

1. Definition of a "Small Business"

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 4 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."⁵¹

⁵¹ While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this Notice, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this Notice and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See Report and Order in MM Docket No. 93-48 (Children's Television Programming), 11 FCC Rcd 10660, 10737-38 (1996), citing 5

2. Issues in Applying the Definition of a "Small Business"

As discussed below, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 C.F.R. § 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 C.F.R. § 121.104(d)(1). The SBA defines affiliation in 13 C.F.R. § 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 C.F.R. § 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 C.F.R. § 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

3. Estimates Based on Census Data

U.S.C. § 601(3).

The rules proposed in this Notice of Proposed Rule Making will apply to full service television and radio stations. The Small Business Administration defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business.⁵² Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.⁵³ Included in this industry are commercial, religious, educational, and other television stations.⁵⁴ Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.⁵⁵ Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.⁵⁶

There were 1,509 television stations operating in the nation in 1992.⁵⁷ That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation as of February 1997.⁵⁸ For 1992⁵⁹ the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.⁶⁰ Thus, the proposed rules will affect approximately 1,550 television stations; approximately 1,194 of those stations are

⁵² 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

⁵³ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

⁵⁴ Id. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

⁵⁵ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

⁵⁶ Id.; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

⁵⁷ FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 53, Appendix A-9.

⁵⁸ FCC News Release, Broadcast Station Totals as of February 28, 1997 (released March 6, 1997).

⁵⁹ Census for Communications' establishments are performed every five years ending with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 53, III.

⁶⁰ The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

considered small businesses.⁶¹ These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the proposed rules may also affect minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations in the United States.⁶² According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States.⁶³

The proposed rule changes would also affect radio stations. The SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business.⁶⁴ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.⁶⁵ Included in this industry are commercial religious, educational, and other radio stations.⁶⁶ Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.⁶⁷ However, radio stations which are separate establishments and are primarily engaged in producing radio program material

⁶¹ We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1996 total of 1550 TV stations to arrive at 1,194 stations categorized as small businesses.

⁶² Minority Commercial Broadcast Ownership in the United States, U.S. Dep't. of Commerce. National Telecommunications and Information Administration, The Minority Telecommunications Development Program ("MTDP") (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. Id. The minority groups included in this report are Black, Hispanic, Asian, and Native American.

⁶³ See Comments of American Women in Radio and Television, Inc. in MM Docket No. 94-149 and MM Docket No. 91-140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, Women-Owned Business, WB87-1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rulemaking, 10 FCC Rcd 2788, 2797 (1995).

⁶⁴ 13 C.F.R. § 121.201, SIC 4832.

⁶⁵ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 55, Appendix A-9.

⁶⁶ Id.

⁶⁷ Id.

are classified under another SIC number.⁶⁸ The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than \$5 million in revenue in 1992.⁶⁹ Official Commission records indicate that 11,334 individual radio stations were operating in 1992.⁷⁰ As of February 1997, official Commission records indicate that 12,135 radio stations are currently operating.⁷¹

We seek comment on these data and estimates regarding the number of small entities affected by the proposals in this Notice.

4. Alternative Classification of Small Television Stations

An alternative way to classify small television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity ("EEO") rule for broadcasting.⁷² Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.⁷³ We estimate that the total number of broadcast stations with 4 or fewer employees is 4,239.⁷⁴

⁶⁸ Id.

⁶⁹ The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

⁷⁰ FCC News Release No. 31327, Jan. 13, 1993.

⁷¹ FCC News Release, Broadcast Station Totals as of February 28, 1997 (released March 6, 1997).

⁷² The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. No. 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and an opportunity for comment. See Report and Order in Docket No. 18244, 23 FCC 2d 430 (1970).

⁷³ See, e.g., 47 C.F.R. § 73.3612 (Requirement to file annual employment reports on Form 395-B applies to licensees with five or more full-time employees); First Report and Order in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. Id. at ¶ 21.

⁷⁴ We base this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: This Notice solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered. This Notice proposes to relax the main studio rule in order to minimize regulatory burdens and give more flexibility to entities that own more than one broadcast station in a market and that wish to co-locate the main studios for these stations at one site. This would allow such entities to achieve greater economies of scale in their operations. We also seek comment on whether the present rule should be modified because it has a differential impact on stations that operate with lower power given that it relies on a signal contour standard which varies by type of broadcast station. In addition, we seek comment on how the Commission, if it chooses to relax the rule, should continue to ensure that the main studio is reasonably accessible to a station's community of license. We seek comment on several options. We seek comment on whether there is a significant economic impact on any class of small licensee or permittee as a result of any of our proposed approaches.

In addition, the Commission proposes to amend the public file rule to permit a broadcast licensee to locate its local public inspection file at its main studio, even when the studio is located outside its community of license. Allowing this flexibility will minimize regulatory burdens, allow same-market multiple station owners to take advantage of economies of scale, and ensure that public files are kept in proper order given that the licensee will have direct supervision over the files.

Finally, the Commission seeks comment on various ways to update and clarify the local public inspection file rules with respect to the required contents of the public files and their retention periods. Such proposals should minimize regulatory burdens by making the rules more uniform and easier to understand.

Report to Congress: The Commission shall send a copy of this Initial Regulatory Flexibility Analysis along with this Notice of Proposed Rule Making in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. § 801(a)(1)(A). A copy of this IRFA will also be published in the Federal Register.